

FILE COPY

IN THE
Supreme Court of the United States

No. 321 OCTOBER TERM, 1941

STONITE PRODUCTS COMPANY,

Petitioner-Appellant

VS.

THE MELVIN LLOYD COMPANY

and

J. A. ZURN MFG. COMPANY,

Respondent-Appellee.

BRIEF FOR RESPONDENT APPELLEE

*On Writ of Certiorari to the United States Circuit
Court of Appeals for the Third Circuit.*

ISAAC J. SILIN,

Attorney for Respondent-Appellee.

Erie Trust Building,
Erie, Pennsylvania.

IN THE SUPREME COURT OF THE UNITED STATES
NO. 321 October Term, 1941

STONITE PRODUCTS COMPANY
v.
THE MELVIN LLOYD CO. and
J. A. ZURN MFG. CO.

CORRECTIONS TO BRIEF FOR
RESPONDENT-APPELLEE

ADD in Index to Brief at end of first point heading under Argument the following - "; The antecedents of Section 52".

SUBSTITUTE the word "Appellant" for "Appellee" in the third point heading under Argument in the Index to the Brief.

SUBSTITUTE the word "Appellant" for "Appellee" in the point heading on Page 12 of the Brief.

SUBSTITUTE the word "Appellee" for "Appellant" in the 18th line of the body of page 13 of the Brief.

SUBSTITUTE "1912" for "1942" in the 4th line from the end of page 22 of the Brief.

INDEX TO BRIEF

	PAGE
Opinions Below	1
Questions Presented	2
Summary of Argument	3
Argument:	
Section 48 and Section 52 of the Judicial Code, in their respective historical developments, show that there is no exclusion of patent litigation from the operation of Section 52	4
The antecedents of Section 48	9
The untenable doctrine for which the appellee seeks support: the absence of its support in United States Supreme Court cases	12
The cogent analogy of the operation of Section 52, in harmony with other acts including the Act of 1875	20
The rules of statutory construction require that two statutory provisions shall be given their full force wherever the plain operation of the language of each can be effected	24

TABLE OF CASES CITED

Cheatham Electric Switching Device Co. v. Transit Development Co., 191 Fed. 727	13
Donnelly v. U. S. Cordage Co., 66 F. 613	10
Doscher v. U. S. Pipe Lines Co. et al., 185 F. 959	13, 22
Downs v. Wall, 176 F. 657	15
East Tennessee V. & G. R. Co. v. Atlanta and F. R. Co., 49 F. 608	13, 20
General Electric Co. v. Marvel Rare Metals Co., 287 U. S. 430	18
Goddard v. Mailler, 80 Fed. 422, 424	13, 20

Henderson's Tobacco, 11 Wallace	652, 657	28
In re Hohorst, 150 U. S.	653 (1893)	9
Horn v. Pere Marquette R. Co., 151 F.	626	23
In re Keasbey and Mattison Co., 160 U. S.	221 (1895)	10, 14
Lumiere v. Mae Edna Wilder, Inc., 261 U. S.	174	15, 16
Motoshaver, Inc. v. Schick Dry Shaver, Inc., 100 F.	(2d) 236 (C. C. A. 9)	13
National Button Works v. Wade, 72 F.	298	10
John P. Park & Sons Co. v. Bruen, 133 F.	806	23
Petri v. F. E. Creelman Lumber Co., 199 U. S.	487	17, 18
Posadas v. National City Bank of New York, 296 U. S.	497, 503, 504	28
The Resolute, 14 F. (2)	232	15
Union Switch & Signal Co. v. Hall Signal Co., 65 F.	625	10
United States v. Borden Co., 308 U. S.	188, 198	24
United States v. Freeman, 44 U. S. (3 How.)	556	17
United States v. Stewart, 311 U. S.	60	17
Westinghouse Air Brake Co. v. Great Northern Ry.	Co., 88 F. 258	10
Zell v. Erie Bronze Co., 273 F.	833, 837	13, 25

MISCELLANEOUS

Alabama, Act of March 10, 1824, c. 28, Section 6 (4 Stat. 10)	6
Alabama, Act of February 6, 1839, c. 20, Section 5 (5. Stat. 315)	6
Georgia, Act of August 11, 1848, c. 151, Section 5 (9 Stat. 281)	6
Iowa, Act of March 3, 1849, c. 124, Section 3 (9 Stat. 411)	6
Mississippi, Act of June 18, 1838, c. 115, Section 4 (5 Stat. 248)	6
Ohio, Act of February 10, 1855, c. 73, Section 9 (10 Stat. 606)	6
Tennessee, Act of January 18, 1839, c. 3, Section 7 (5	

Stat. 314)	6
Section 48 of the Judicial Code (28 U. S. C. A., Section 109)	11
Section 51 of the Judicial Code	14
Section 52 of the Judicial Code (28 U. S. C. A. Section 113)	4
Section 11 of the Judiciary Act of September 24, 1789, c. 20, 1 Stat. 79	9
Act of May 4, 1858, c. 27, Section 1	5, 8
Act of March 3, 1897, c. 395, 29 Stat. 695	14
24 Stat. 552, Sec. 1	7

OPINIONS BELOW

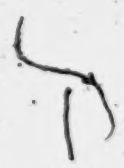
The opinion of the District Court is reported at 36 Fed. Supp. 29 (R. 10-12).

The opinion of the Circuit Court is reported at 119 Fed. Rep. (2nd) 883 (R. 15-21).

QUESTIONS PRESENTED

1. Has the enactment of the Act of March 3, 1897, 29 Stat. 695, reenacted in Section 48 of the U. S. Judicial Code, 28 U. S. C. A. Sec. 109, repealed by implication the Acts of May 4, 1858, c. 27, Sec. 1, 11 Stat. 272 and February 24, 1863, c. 54, Sec. 9, 12 Stat. 662 carried into U. S. Revised Statutes, Sec. 740 and later into U. S. Judicial Code, Sec. 52, 28 U. S. C. A. Sec. 113?

2. In a patent infringement case brought in the Western District of Pennsylvania against a resident of the Western District of Pennsylvania, does the Court have jurisdiction of a co-defendant who is a resident of and was served in the Eastern District of Pennsylvania over its objection to the venue and jurisdiction of the Court?



SUMMARY OF ARGUMENT

The continuous and unimpaired operative effect of Section 52 of the Judicial Code since enactment of its antecedent acts is not inadvertently cut short and Section 52 is not impliedly repealed by the Act of March 3, 1897 carried into Section 48 of the Judicial Code without any expression of repeal. The history of these venue statutes and those related thereto and the legislative policy disclosed therein show the Congressional intention to command that Sections 52 and 48 shall be given full effect together.

Patent suits do not possess a unique character excluding them from the operation of Acts of Congress and a special exclusion of patent suits from the operation of acts otherwise applicable to patent suits would have to be written into such an act if its operation would not be to cover patent suits. Since both Section 48 and Section 52 may be fully operative without affecting the force of either, they should be construed to stand together.

ARGUMENT

SECTION 48 AND SECTION 52 OF THE JUDICIAL CODE, IN THEIR RESPECTIVE HISTORICAL DEVELOPMENTS, SHOW THAT THERE IS NO EXCLUSION OF PATENT LITIGATION FROM THE OPERATION OF SECTION 52; THE ANTECEDENTS OF SECTION 52.

This case involves the interrelation of two sections of the Judicial Code pertaining to venue of the district courts. Section 48 of the Code defines the venue in patent infringement suits and Section 52 is a general venue statute applying to district courts in those states which have more than one district. Since this latter general venue statute applies to "every suit not of a local nature" its provisions will govern patent infringement litigation as well as any other suits not of a local nature. In addition to the plain words of the statute, such construction is supported by the historical development of these provisions and by authority of the Federal Courts.

Section 52 of the Judicial Code (28 U. S. C. A. Section 113) provides as follows:

"When a State contains more than one district, every suit not of a local nature, in the district court thereof, against a single defendant, inhabitant of such State, must be brought in the district where he resides; but if there are two or more defendants, residing in different districts of the State, it may be brought in either district, and a duplicate writ may be issued against the defendants, directed to the marshal of any other district in which any defendant resides. The clerk issuing the duplicate writ shall indorse thereon that it is a true copy of a writ sued out of the court of the

proper district; and such original and duplicate writs, when executed and returned into the office from which they issue, shall constitute and be proceeded on as one suit; and upon any judgment or decree rendered therein, execution may be issued, directed to the marshal of any district in the same State."

The above quoted section was known as Revised Statutes, Sec. 740 and had been derived from the Act of May 4, 1858, c. 27, Sec. 1, 11 Stat. 272 and the Act of February 24, 1863, c. 54, Sec. 9, 12 Stat. 662, and with only a minor change of reference to the District Court instead of "Circuit or District Courts", that section of the Revised Statutes was carried into Sec. 52 of the Judicial Code above quoted in part. This history is thus dwelt upon because it is regarded as materially affecting the view to be taken of the effect of this provision in the light of another later provision carried into Sec. 48 of the Judicial Code.

At this point, too, it is proper to call attention to the words "every suit not of a local nature" above quoted. Sec. 52 of the Judicial Code when originally enacted contained no exception in reference to patent cases. The Congress, therefore, in enacting the predecessor of Sec. 52 of the Judicial Code enacted it without exception in respect of patents at a time when the omission to provide for an exception in respect of patent cases could not have been said to have been inadvertent. The intention of Congress to except everything which it then intended to except is shown by the excepting words "not of a local nature" above quoted. The intention was clear to have included all cases not of a local nature including patent cases.

If this statute now carried into section 52 of the Judicial Code stood unrepealed, as it does, and alone, there would be no question that this suit could properly be brought in the Western District of Pennsylvania against the defendant residing in the Eastern District of Pennsyl-

vania. The Act of 1858 and 1863, which became Sec. 740 of the Revised Statutes (Revision of 1873 and 1874) has been without question continuously in force since its first enactment in view of its reenactment without change in Sec. 52 of the Judicial Code, being the Act of March 3, 1911, 36 Stat. 1101.

It was natural in our federal union of states to think in terms of state boundaries whenever a question of a division of the country for any federal purpose arose. Thus, it came about that the federal judicial districts became divided initially along state lines and each district had state wide jurisdiction. Later it appeared to be expedient on account of the size, in population, area or business, of certain states to divide them into two or more districts. Nevertheless, the enactment of special provisions for district courts of particular states, providing for suit in any one district court of that state against two or more defendants residing in different districts, shows that the idea of state wide venue continued with uninterrupted force. These provisions are cited in the Opinion of Judge Maris in this case in the Circuit Court of Appeals; Alabama. Act of March 10, 1824, c. 28 Section 6 (4 Stat. 10); Mississippi. Act of June 18, 1838, c. 115 Section 4 (5 Stat. 248); Tennessee. Act of January 18, 1839, c. 3 Section 7 (5 Stat. 314); Alabama. Act of February 6, 1839, c. 20 Section 5 (5 Stat. 315); Georgia. Act of August 11, 1848, c. 151 Section 5 (9 Stat. 281); Iowa. Act of March 3, 1849, c. 124 Section 3 (9 Stat. 411); Ohio. Act of February 10, 1855, c. 73. Section 9 (10 Stat. 606).

The record in the United States Senate of the enactment of the predecessor Act to Section 52 is in part below set forth.

Congressional Globe, 1st Session, 35th Congress, Vol. 36, pt. 1, p. 936, March 3, 1858:

Mr. Pugh: The Committee on the Judiciary to whom was referred the bill (S. No. 36) further to

amend an "Act to divide the State of Illinois into two judicial districts" approved February 13, 1855, have had the same under consideration and have instructed me to report a general act as a substitute for that bill. I ask, if there be no objection that it be now put on its passage.

The substitute was read * * *

Mr. Stuart: It seems to me, if the Senator is going to have a substitute entirely different from the bill which was referred, he had better have it printed, so that we can see it.

Mr. Pugh: I will say to the Senator it is hardly worthwhile. In the case of Illinois, and in one or two other cases, we find, on examination, that in dividing the State into two districts, Congress did not make provision for process to run from one district to the other. In some cases, as in Ohio, a special provision of that sort has been made. Our object is to make it a universal rule, and not to pass special acts in each case. These are the provisions: they are relative to the subject matter where the defendants reside in different districts of the same State. It does not go beyond that.

Mr. Stuart: I understood the bill to change the general practice in the courts. If it is only to apply to special cases of when a State is divided into judicial districts, I shall not object.

Mr. Pugh: It makes no change in the general practice. It is simply to apply the provisions of law relative to the division of Ohio to Illinois and other States which have been divided.

Mr. Stuart: Where States are divided into two districts.

Mr. Pugh: Or more than two.

The Senate in Committee of the whole, proceeded to consider the bill, and the substitute to the Committee was agreed to. The bill was reported to the Senate as amended and the amendment was concurred in. The bill as amended was ordered to be engrossed for a third reading. Read the third time and passed. The title was amended so as to read, "A bill to provide for the issuing, service, and return of original and final process in the circuit and district courts of the United States in certain cases."

The Act of May 4, 1858, c. 27, Sec. 1 first enacted a general provision for all states having more than one district and that enactment was in substance the same as Sec. 52 of the Judicial Code. This idea of state wide venue has persisted to the present day without substantial change or qualification as seen in the reenactment of the Act of 1858 as Sec. 740 of the Revised Statutes and Section 52 of the Judicial Code.

In permitting district courts of the several states to have venue of joint defendants in other districts of the same state, Congress is imposing no great hardship on such defendants. The state of Pennsylvania is divided into three districts, yet for example, the state of Montana covering a territory more than three times greater than all of Pennsylvania, has only one district. The same is true in considering the work of the courts in regard to population included in the district: The population of the northern district of Illinois exceeds the sums of the total population of many states comprising single districts. As the area and population covered by the district courts is variable in all instances, there is no reason to limit the provisions in Section 52 of the Judicial Code for state wide venue of the district courts, and patent infringers have no greater claim for immunity from the operation of Section 52 than have any other defendants in the federal courts.

THE ANTECEDENTS OF SECTION 48

Understanding of Sec. 48 may be advanced by reference to the history of venue in the district courts. Under Sec. 11 of the Judiciary Act of September 24, 1789 c. 20, 1 Stat. 79, a suit could be instituted in any federal court for a district where the defendant was an inhabitant or where he was found at the time of serving the writ. This provision was continued by the Act of 1875. It imposed hardship on a defendant who was found and served in a suit commenced in a court far from the scene of the controversy or home of the defendant and gave the plaintiff an undue advantage in selecting the forum. Congress sought to correct this situation by the Act of March 3, 1887, c. 373 Sec. 1. The first part of this Act read, "the Circuit Courts of the United States shall have original cognizance, concurrent with the courts of the several states, of all suits of a civil nature" and then went on to give limitations of the amount in controversy, etc. Subsequently, in the same section of that act it was provided that

"no civil suit shall be brought before either of said courts against any person by any original process or proceeding in any other district than that whereof he is an inhabitant; but where the jurisdiction is founded only on the fact that the action is between citizens of different States, suit shall be brought only in the district of the residence of either the plaintiff or the defendant." 24 Stat. 552 Sec. 1.

This statute came before this court in *In Re Hohorst*, 150 U. S. 653 (1893) in a petition for a writ of mandamus to command the judges of a circuit court to take jurisdiction in a suit brought in a district in which the defendant was not an inhabitant, for patent infringement against an alien corporation. This Court granted the petition and held that the venue was proper and that the Act of 1887 (*supra*)

was inapplicable to aliens and to a patent case arising under the exclusive jurisdiction of the federal courts. In so holding, the court pointed out at page 661—"The section now in question, at the outset, speaks only of so much of the civil jurisdiction of the Circuit Courts of the United States, as is 'concurrent with the courts of the several States' and as concerns cases in which the matter in dispute exceeds two thousand dollars in amount or value." The court then goes on to hold that the limitation on venue in the statute is no more applicable to patent cases than the limitation of amount in controversy would be.

After the Hohorst case, lower federal courts applied the provisions of the venue act of 1887 to patent litigation on the erroneous assumption that the Hohorst case only applied to alien defendants and held that patent suits could only be brought in the district where the defendant, if a non-alien, resided. See *Union Switch & Signal Co. v. Hall Signal Co.*, 65 F. 625, *Donnelly v. U. S. Cordage Co.*, 66 F. 613.

Cases of the kind immediately above cited confused the situation and this Court then considered this matter further in *In re Keasbey and Mattisen Co.*, 160 U. S. 221 (1895). In that case this Court reaffirmed what it had held in the Hohorst case and said in reference to it at page 230, "It was a suit for infringement of a patent right exclusive jurisdiction of which had been granted to the Circuit Courts of the United States by section 629, cl. 9, and section 711 cl. 5 of the Revised Statutes, reenacting earlier acts of Congress; and was therefore not affected by general provisions regulating the jurisdiction of the courts of the United States, concurrent with that of the several States."

Thereafter, the lower federal Courts conformed their rulings to the two United States Supreme Court cases above discussed and held that patent litigation could be brought in any district in which the defendant could be found. See *National Button Works v. Wade*, 72 F. 298, *Westinghouse*

Air Brake Co. v. Great Northern Ry. Co., 88 F. 258. This situation created the hardships for defendants in patent suits and for plaintiffs in patent suits the undue advantages which existed in other suits prior to said legislation of 1887. As the quotations, contained and omitted in appellant's brief, from the Congressional record show, Congress soon desired to remedy these inequities.

And so fifteen months after the decision in the *Keasbey and Mattison* case, Congress enacted the Act of March 3, 1887, c. 395, 29 Stat. 695 subsequently reenacted as Section 48 of the Judicial Code (28 U. S. C. A. Section 109) as follows:

"In suits brought for the infringement of letters patent the district courts of the United States shall have jurisdiction, in law or in equity, in the district of which the defendant is an inhabitant, or in any district in which the defendant, whether a person, partnership, or corporation, shall have committed acts of infringement and have a regular and established place of business. If such suit is brought in a district of which the defendant is not an inhabitant, but in which such defendant has a regular and established place of business, service of process, summons, or subpoena upon the defendant may be made by service upon the agent or agents engaged in conducting such business in the district in which suit is brought."

This statute contained no express repealer of prior statutes nor even a general repealer of inconsistent acts. It served to bring venue provisions as to patent infringement suits more into line with general venue provisions, although still leaving the district courts a broader venue as to patent infringement than as to other civil cases.

The historical development of Section 52 shows that it is a general venue provision designed to meet a special geographical problem. And the historical development of Section 48 shows that it is a venue provision for a special

type of case. Venue has been broader in patent than in other cases. Since there was no statement in the Act of 1897 (Section 48) that it repealed any other statutory provision, that act furnishes no basis for inference that Congress intended only a plaintiff in patent infringement litigation to be barred from suing in a single action all the defendants in one state even though that state happened to be divided into more than one district. This view is strengthened by the fact that Congress incorporated both sections 48 and 52 into the Judicial Code without any suggestion that the words "every suit" in Section 52 did not apply to a patent suit.

**THE UNTENABLE DOCTRINE FOR WHICH THE
APPELLEE SEEKS SUPPORT: THE ABSENCE OF
ITS SUPPORT IN UNITED STATES SUPREME
COURT CASES**

The idea, which carries the burden of appellant's argument and which may find some support in the lower court cases relied on by appellant, is that the place of bringing action against patent infringers is a subject of separate kind and separate class. On this basis it is claimed that other Statutes such as the one in Section 52 of the Judicial Code as to additional co-defendants in other Districts of the same State cannot affect actions against patent infringers. This idea is one that ought not to be followed. Such a doctrine might be carried to lengths which Congress could never have intended and by the operation of that doctrine a statutory procedural rule which the Court thought it unwise to apply in patent infringement cases would be cut off from operation in them by a judicial conception that there was involved a kind of statutory provision which was conceived as not intended to be applicable in patent cases on account of some im-

plication worked out by a court contrary to the plain words used by the Congress.

It should be observed that Section 52 of the Judicial Code has reference to a matter of co-defendants in Districts within the same State, a subject matter entirely untouched by Section 48 of the Judicial Code relating to the circumstances required to exist against one of the co-defendants in the District so that a suit for patent infringement may be initiated.

Cases presenting the issues present here and heretofore decided are, holding favorably to the contention of the appellee, *Zell v. Erie Bronze Co.*, 273 Fed. 833, in the Eastern District of Pennsylvania (Dickinson, J.) and holding favorably to the contention of the appellant, *Moto-shaver, Inc. v. Schick Dry Shaver, Inc.*, 100 F. (2d) 236 (C.C.A. 9) and *Cheatham Electric Switching Device Co. v. Transit Development Co.*, 191 Fed. 727. Also favorable to the contention of the appellant are a number of cases hereinbelow referred to holding that Section 52 of the Judicial Code (formerly Section 740 of the Revised Statutes) was not repealed by implication through the enactment of other later statutes and included among those cases are *East Tennessee, V. & G. R. Co. v. Atlanta & F. R. Co.*, 49 Fed. 608, *Goddard v. Mailler*, 80 Fed. 422, *Doscher v. U. S. Pipe Lines Co. et al.*, 185 Fed. 958 and others. The admiralty cases involving Section 52 and others cited herein support directly or by focus of inference or by necessary conclusion the position of the appellee.

Although this court has never before decided the precise question in this case, decisions of this court indicate that the Third Circuit Court of Appeals was correct in holding that Section 52 of the Judicial Code is applicable as well to alleged patent infringers in separate districts within a state as to any other alleged tortfeasors. The Hohorst case contains no statement or indication that general venue statutes do not apply to patent cases and only holds that this

particular statute, the Act of March 3, 1887, cannot regulate patent matters because it is limited to cases of concurrent jurisdiction. This Court in *In re Keasbey and Mattison Co.*, *supra*, comments on the Hohorst case and properly notes that patent cases are "not affected by general provisions regulating the jurisdiction of the Courts of the United States, concurrent with that of the several states." We may infer that a general venue statute not limited to cases of concurrent jurisdiction would operate in patent cases. No statute can be found to justify the treatment of patent cases as a segment of all legal phenomena ungoverned by the rules applicable to the remaining such phenomena. Every presumption would be to favor the operation of all statutes and all venue statutes wherever applicable, unless exceptions are expressly incorporated in them. We cannot say that Congress must have in mind that all it enacts will fail to govern patent cases unless it expressly so states. This Court's cases discussed above do not contain any statement or holding that general venue statutes, when unlimited by applicable qualifications such as cases of concurrent jurisdiction, do not apply to patent cases.

Section 51 of the Code, originally the Act of March 3, 1887, is sometimes referred to as the general venue statute, even though it is limited in operation to cases of concurrent jurisdiction. But the fact that this statute does not apply to patent cases, because they are not cases of concurrent jurisdiction, is no authority that any statute touching venue generally is inapplicable to patents. Section 52 of the Judicial Code is such a general venue statute. There is nothing in Section 52 or any of its prior enactments which limits its effect to cases arising under the concurrent jurisdiction of the federal courts. Thus, Section 52 is a general venue statute applicable as well to this patent case arising under the exclusive jurisdiction as to cases arising under the concurrent jurisdiction of the federal courts.

Appellants base their argument that Section 52 of the Judicial Code does not apply here upon the broad state-

ment that general venue statutes are not applicable to patent litigation. This surprising conclusion arises out of the error of finding a statute such as Section 51 applying only to concurrent jurisdiction and naming it a general venue statute. Once the statute is named, the intellectual damage is done and it is said that Section 51 is a general venue statute and does not apply to patent cases. Then the appellant in effect follows with the unwarranted generalization that all general venue statutes do not apply to patent cases. Here is reasoning from the particular to the general, in a step which ignores the limitations to cases of concurrent jurisdiction in Section 51. Thus, appellant and some courts have fallen into the error of holding Section 52 as a general venue statute does not apply to patent cases, although there is no limitation of Section 52 to cases of concurrent jurisdiction. It is a well established rule that, since patent cases are in the exclusive jurisdiction of the United States Courts, venue statutes limited to cases of concurrent jurisdiction are not applicable to suits against infringers of patents. This rule has no bearing on the operation of Section 52 which is not limited to cases of concurrent jurisdiction.

Admiralty jurisdiction is exclusively in the Federal Courts and Section 52 permits joinder of defendants resident in several districts of the same state in admiralty suits in a federal Court for the district where one of the defendants resides. *Downs v. Walk*, 176 F. 657, *The Resolute*, 14 F. (2) 232.

In *Lumiere v. Mac Edna Wilder, Inc.*, 261 U. S. 174, Justice Brandeis said at page 176, "The venue of suits for infringement of copyright is not determined by the general provision governing suits in the federal district courts. Judicial Code, Section 51 (Comp. St. Section 1033)." The opinion refers to only one particular section of the Judicial Code, that conferring venue in ordinary civil suits, and goes on to point out in the next sentence that there is a

special provision relating to venue of copyright suits. There is no indication that any other general venue provision not specifically excluding copyright cases (or some class of cases including copyright cases with the definition of the class) would be inapplicable to copyright litigation. Justice Brandeis went on to say at page 178, "As there is in this case only one defendant, the provision concerning suits in states which contain more than one federal judicial district can have no application. See Judicial Code, Section 52 (Comp. St. Section 1034) * * *". This case is consistent with and clears the ground for a holding that Section 52 applies to venue in copyright cases and so also in patent cases, since both are classes of cases exclusively in the jurisdiction of Federal courts. An error in quotation from *Lumiere v. Mae Edna Wilder Inc.*, 261 U. S. 174, appears on the last line of page 11 of Appellant's Brief. The quotation there adds an (s) to the word provision, thereby making it plural instead of singular as in the Opinion. The quotation should read as follows: "The venue of suits for infringement of copyright is not determined by the general provision governing suits in the federal district courts. Judicial Code, Section 51 * * *". This correction is required to prevent a fundamental change in meaning. From the quotation in Appellant's Brief, it would appear that the court held that all general venue provisions were inapplicable to suits for copyright infringement, and so were inapplicable to patent litigation in so far as copyright and patent litigation are similarly governed. However, as the opinion actually reads, the court is only saying that the provision governing initiatory venue of Section 51 of the Judicial Code does not operate in copyright infringement actions.

Since Section 52 applies to every suit not of a local nature, it would apply to suits for patent infringement in the absence of any other legislation. The only question therefore is as to the effect that the enactment of Section 48 of the Judicial Code providing for venue of suits

for patent infringement has on the applicability of Section 52 to such suits. As has been pointed out Section 48 at the time of its enactment contained no repealers, general or particular. It can not be seriously contended at this time that Section 48 caused an implied repeal of Section 52 as Congress by reenacting both sections in the Judicial Code has indicated that there was no intention for one to repeal the other and has indicated that both are to be given full effect.

It is true that both sections deal with venue and they meet in operation in the sense that both may apply to the venue of the same suit. In that sense they may be said to be in *pari materia*. As was stated by this court in *The United States v. Freeman*, 44 U. S. (3 How.) 556, "the correct rule of interpretation is, that if divers statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them, and it is an established rule of law, that all acts in *pari materia* are to be taken together, as if they were one law. Doug., 30; 2 Term Rep., 387, 586; 4 Maule & Selw., 210. If a thing contained in a subsequent statute, be within the reason of a former statute, it shall be taken to be within the meaning of that statute. Lord Raym., 1028." This principle was recently reaffirmed in *United States v. Stewart*, 311 U. S. 60. Section 48 is so operatively consistent with the provisions of Section 52 that joint defendants in different districts of a state may be sued in any district of that state where they reside.

In *Petri v. F. E. Creelman Lumber Co.*, 199 U. S. 487, the statutes involved were the Act of March 2, 1887, a special statute relating to the division of Illinois into judicial districts. Section 4 provided in terms substantially similar to Section 52 of the Judicial Code for a single suit against joint defendants within the different districts of Illinois and the Act of March 3, 1887 (24 Stat. 552) provided that no civil suit should thereafter be brought in any other

district than that whereof defendant was an inhabitant. One of the two defendants objected to the jurisdiction of the court because it was an inhabitant of the Southern district of Illinois and not of the Northern district of Illinois where suit was brought. The court, in overruling the objection stated at page 497, "It is elementary that repeals by implication are not favored, and that a repeal will not be implied unless there be an irreconcilable conflict between the two statutes" and pointed out that there had been enacted similar special statutes since the Act of March 3, 1887 showing that Congress did not believe there was an irreconcilable conflict.

In the instant case, Section 52 has been reenacted concurrently with Section 48, showing a similar Congressional state of mind. In the *Petri* case and this, statutes providing for suit against joint defendants in different districts of the same state in either district were followed by statutes limiting venue. On the authority of *Petri v. F. E. Creelman Lumber Co.*, *supra*, it appears that Section 52 of the Judicial Code is not in irreconcilable conflict with Section 48 and both must be given effect where possible.

In *General Electric Co. v. Marvel Rare Metals Co.*, 287 U. S. 430, this Court considered Section 48 of the Judicial Code, 28 U. S. C. 109, as to the venue of patent cases and whether those provisions could be and were waived by starting action in another district than the districts specified in the statute. The Court said of Section 48 at page 435 of the opinion:

"It confers upon defendants in patent cases a privilege in respect of the places in which suits may be maintained against them. And that privilege may be waived."

Thereby this court did not decide that all other venue statutes were inapplicable to patent cases. Quite on the other hand, it must be inferred from the *Marvel* case that

if Section 48 may be waived by a private party, a fortiori, its operation certainly may be extended by the operation of a statute such as Section 52 of the Judicial Code so that there may be joined in a single suit two or more defendants residing in different districts of a state.

Section 52 has been and is a Statute regulating the flow of business among the several district courts in a State containing more than one district. It is a failure to recognize this purpose of the Act apparent from its history which permits the appellant's mind to fall in a trap by its reading of that part of Section 52 which relates to venue against a single defendant inhabitant of a State containing more than one district. When Section 52 is read to cover the conditions which may arise in respect of defendants resident in a State containing more than one district no difficulties of interpretation appear. It is only when the purpose of Section 52 to regulate the flow of business among the district courts of a State containing more than one district is forgotten that any inconsistency can be cast into the operation of Section 52 alongside of Section 48.

This purpose of Section 52 to regulate venue among district courts of a State containing more than one district should be taken into account and if it is taken into account no inconsistency or ambiguity or difficulty of interpretation of Section 52 arises in giving it full force, either in respect of a single defendant or in respect of two or more defendants resident in such a State. The seeming and unreal difficulty created in one part of appellant's argument arises from an attempt to read part of the words of Section 52 in specific opposition to some of the words in Section 48. No such handling of statutes is sound. All of the words of Section 52 should be taken into account and when so taken the mystery and the cloud and the inconsistency disappear and Section 48 and Section 52 are found to be brotherly statutes which can live together in harmony.

THE COGENT ANALOGY OF THE OPERATION OF SECTION 52 IN HARMONY WITH OTHER ACTS INCLUDING THE ACT OF 1875

The enactment carried into Sec. 52 of the Judicial Code, formerly Section 740 of the Revised Statutes, has been held not to be repealed by implication by the enactment of the Acts of March 3, 1875, c. 137, 18 Stat. 470, March 3, 1887, c. 373, 24 Stat. 552 and August 13, 1888, c. 866, 25 Stat. 433. The cases so holding are below set forth because they are persuasive analogies to show that the enactments carried into Section 52 of the Judicial Code are not to be set aside by implication from Section 48 of the Judicial Code. The cases cited below will be found all the more convincing because there were express provisions of repeal of all acts inconsistent therewith in all the statutes there reviewed to determine whether or not by implication they repealed the act which became Section 52 of the Judicial Code and which is the key to this case. In the case now before the Court it can be pointed out that the Act carried into Section 48 of the Judicial Code carried with it no provisions for repeal of any other Act.

In the case of *East Tennessee, V. & G. R. Co. v. Atlanta & F. R. Co.*, 49 F. 608 on motion by the Plaintiff for an attachment the Defendant objected that the Court had no jurisdiction over him because Section 740 of the Revised Statutes, which subsequently became Section 52 of the Judicial Code, had been repealed by the Act of 1875 and the amendments thereto. The question before the Court was whether the Act of March 3, 1875 providing that "no civil suit shall be brought before either of said courts against any person, by any original process or procedure, in any other District than that whereof he is an inhabitant or in which he is found at the time of serving such process", repealed by implication the provision now incorporated in Section 52 of the Judicial Code as to the joint suit against

defendants in different Districts in one State, particularly because the Act of 1875 specifically repealed all Acts inconsistent with it. The Court granted the Motion, holding that it did have jurisdiction and that the Act of 1875 could be harmonized with Section 740 of the Revised Statutes (now Sec. 52 of the Judicial Code) and effect be given to both.

In the case of *Goddard v. Mailler*, 80 Fed. 422 the Defendant had filed an objection to the jurisdiction of the Circuit Court for the Southern District of New York because he was not an inhabitant of the Southern District of New York but on the contrary resided in the Eastern District. The question presented to the Court was whether the Act of August 13, 1888, 25 Stat. 433, which provided that no civil suit shall be brought in a Circuit Court against any person "in any other District than that whereof he is an inhabitant" repealed by implication the provisions of Section 740 of the Revised Statutes, subsequently reenacted in Section 52 of the Judicial Code. The Court pointed out that the one exception to the Act of 1885 was that where jurisdiction was based upon diversity of citizenship, suit could also be instituted in the District of the Plaintiff: The Court also pointed out that the Act of 1888 repeals all acts conflicting with it. Nevertheless the Court held that Section 740 of the Revised Statutes was still in force and that the Court had jurisdiction saying at page 424:

"Repeal by implication is not favored. If the earlier law be not plainly in conflict with the later law it should stand. If effect may be given to both it is the plain duty of the Court to uphold the earlier law. 'No statute should be construed as repealing a prior one, unless so clearly repugnant thereto as to admit of no other reasonable construction'."

"The Court is unable to see what the language quoted from Section 740 is inconsistent with the pro-

visions of Section 1 of the Act of 1888. It provides for a contingency not mentioned in the Act. If Congress had incorporated it into the Act of 1888 the first section would be consistent and harmonious."

Similarly, Section 52 of the Judicial Code provides for a contingency not mentioned in Section 48 thereof and similarly, the two sections are consistent and harmonious.

In the case of *Doscher v. U. S. Pipe Lines Co. et al.*, 135 F. 958 the same question as to jurisdiction was raised by the Defendant alleging that Section 740 of the Revised Statutes (now Section 52 of the Judicial Code) had been repealed by the Acts of 1875, 1887 and 1888. The Court held that it did have jurisdiction and pointed out that Section 740 of the Revised Statutes was not clearly repugnant to these acts but might be read in harmony with them as a second exception relating to matter which was not specifically provided for in those acts. The Court said at page 961:

"There is this particular consideration also in favor of sustaining Section 740, if the question of repeal is doubtful. The inconvenience to a Defendant of being sued in a different district may sometimes be real and should be avoided as far as practicable. But it is much more inconvenient for a Plaintiff not merely to bring one suit away in a defendant's district, but to be obliged to bring several suits on the same cause of action, and to try the same issues more than once. In Pennsylvania he might have to go over the same ground three times at great expense and hardship."

It is also interesting to point out that the Court stated that this question would no longer be open to any doubt after January 1, 1942 because both Section 740 of the Revised Statutes and the Act of 1875, as amended, had been reenacted without qualification in the Judicial Code. This, the Court said showed in effect that Congress did not find

that these acts were inconsistent. Similarly in the present case Section 48 and Section 52 of the Judicial Code were enacted without qualification and showed a similar intent on the part of Congress that both should be given full effect.

In accord with the above cited cases as to Section 740 and related provisions in the Revised Statutes not being repealed by the subsequent Acts of 1875, 1887 and 1888 are:

John D. Park & Sons Co. v. Bruen, 133 Fed. 806
(C. C. S. Dist. N. Y.)

Horn v. Pere Marquette R. Co., 151 Fed. 626 (C. C. E. Dist. Mich.)

The situation presented in these cases is analogous to that presented here. Section 52 is not inconsistent with Section 48 but on the contrary provides for a contingency not covered by Section 48. If the provisions of Section 52 as to action against joint defendants in two or more districts in the same state are incorporated into Section 48, the results are logical and consistent. Section 48 defines the requirements of initiatory venue in suits for patent infringement. Those requirements have to be met. At least one defendant must be an inhabitant of or have committed acts of infringement and have a regular and established place of business within the district in which suit is started. However, once those initiatory requirements are met, Section 52 allows an auxiliary venue and permits the joinder of additional defendants in different districts in the same state according to its requirement for residence and procedure.

Another analogy may be drawn from the fact that the antecedent of Section 52 was in force without any inconsistency at the same time as the provisions of Section 739 of the Revised Statutes, taken from Section 11 of the Act of September 24, 1789 c. 20. Under the earlier law of Section 739 of the Revised Statutes a defendant could be sued where he was found or where he was an inhabitant.

No inconsistency is indicated in any court cases or in any Congressional action between Section 739 and Section 740 of the Revised Statutes (carried into Section 52 of the Judicial Code) in respect of the division of business among the district courts of a State containing more than one district where a defendant was resident in such state.

THE RULES OF STATUTORY CONSTRUCTION REQUIRE THAT TWO STATUTORY PROVISIONS SHALL BE GIVEN THEIR FULL FORCE WHEREVER THE PLAIN OPERATION OF THE LANGUAGE OF EACH CAN BE EFFECTED

This Court has recognized that one statute may be auxiliary to another and if that is the case that there is no conflict between them. In *United States v. Borden Co.*, 308 U. S. 188 at page 198 it was said:

“It is a cardinal principle of construction that repeals by implication are not favored. When there are two acts upon the same subject, the rule is to give effect to both if possible. * * * The intention of the legislature to repeal ‘must be clear and manifest’. * * * It is not sufficient as was said by Mr. Justice Story in *Wood v. United States*, 16 Pet. 342, 362, 363, 10 L. Ed. 987, ‘to establish that subsequent laws cover some or even all of the cases provided for by (the prior act); for they may be merely affirmative, or cumulative, or auxiliary.’ There must be ‘a positive repugnancy between the provisions of the new law and those of the old; and even then the old law is repealed by implication only, pro tanto, to the extent of the repugnancy’.

* * *

Section 52 of the Judicial Code has to do with auxiliary venue where there are two or more defendants in different districts resident in the same state and the section does not

conflict with the operation of initiatory venue in patent cases governed by Section 48 of the Judicial Code.

Judge Dickinson concisely stated the position of appellee as to the proper interpretation of Sections 48 and 52 of the Judicial Code in *Zell v. Erie Bronze Co.*, 273 F. 833 at page 837.

"The genesis of these several acts of Congress and the order in which they appear in the present Judicial Code are all consistent with this thought, that a defendant in any kind of a case may be sued in his own district, and there alone, except that where diversity of citizenship is a sole ground of jurisdiction he may also be sued, if service can there be had upon him, in the district of the plaintiff, and that in patent suits the infringer may be sued in the district in which he commits acts of infringement, if he there maintains an office, etc.; that where there are several defendants the plaintiff may proceed against the defendant who is an inhabitant of the district in which the suit is brought, and if all of the defendants reside within the same state, although in different districts, they may all be sued in the district of any one of them, extraterritorial service being made upon those out of the districts."

Judge Maris in his opinion in the Circuit Court of Appeals in this case said that the construction of these sections was correctly indicated in the above quotation.

The well established doctrine that Courts do not favor a repeal by implication would be decisive of this matter without regard to the continuous operative effect and reenactment of Section 52 of the Judicial Code as originally enacted as long ago as 1858 and carried forward through the Revised Statutes to its present place in the Judicial Code. The only meaning which the doctrine of repeal by implication can really have in this case is that of a repeal by inadvertence. For, so far as the administration of justice is concerned,

we must assume that legislative action is intelligent action and that a desired repeal will be stated as such. Statutory provisions which are reenacted side by side must have been intended to operate together without diminution of the operative effect of either. And this leads us to the concomitant rule of statutory construction that the best construction of two statutes in effect at the same time is that which will give, wherever possible, force to all the words in each statute.

The history of the provision antecedent to and embodied in Section 52 of the Judicial Code is that of a statute operating in every case except those of a local nature to extend to litigants and courts alike the advantages of a reduction in the number of suits to be tried by providing that in cases where more than one defendant resides in the same state one action, and not several, will be needed to determine the issues arising out of the same or substantially the same set of facts. The policy underlying Section 52 of the Judicial Code and its antecedents was a policy of such obvious benefits to the judicial system and litigants alike that a further hesitancy to repeal it by implication should prevail.

Patent cases are notoriously difficult and expensive for both plaintiffs and defendants. The policy of limiting the initiation of patent suits to help defendants, as provided in Section 48 of the Judicial Code (the Act of March 3, 1897) is not at all inconsistent with a comparable policy to aid plaintiffs so that they will not have to sue on the same or substantially the same cause of action in two districts in the same state even in patent suits (the Acts of 1858 and 1863 now Section 52 of the Judicial Code).

Section 48 of the Judicial Code must be considered as a test of the kind of fact of jurisdiction or venue which must exist in order that an action may be initiated in any Federal District Courts, while the history as well as content of Section 52 of the Judicial Code shows that it must

be considered not as a statute governing initiatory venue but as a supplement to all such initiatory venue statutes providing for an auxiliary venue within the confines of a single state. Section 52 of the Judicial Code thus creates an added venue or jurisdiction as to a second defendant in one district provided an action has been properly initiated in another district of the same state against a resident therein. From this interpretation of the interrelating effect of Sections 52 and 48 of the Judicial Code, it is clear that these two statutes are entirely consistent one with the other. In this case there is not the slightest ground for an implied repeal in whole or in part but on the contrary full effect should be given to both statutes.

Prior to the Act of 1897 a defendant in a patent case could be sued for infringement anywhere that he could be found. After that act there is nothing startling in holding that an infringer in a patent case could be sued under the terms of Section 52 of the Judicial Code provided he was a co-defendant with another defendant who did come within the terms of Section 48 of the Judicial Code. Such a holding would be consonant with our generally accepted ideas of reasonable venue and would prevent the patent infringer from having a greater immunity from suit under Section 52 of the Judicial Code than would any other tortfeasor.

The propriety of the suggestion that the operation of Section 52 of the Judicial Code is in accordance with generally accepted views as to the extent of venue and service in Federal District Courts is shown by the fact that the new Federal Rules of Civil Procedure contain in Rule 4 (f) thereof the following:

"All process other than a subpoena may be served anywhere within the territorial limits of the state in which the district court is held and, when a statute of the United States so provides, beyond the territorial limits of that state: * * *"

The policy behind Rule 4 (f) indicates the most modern and thoughtful outlook that if possible, matters that can be determined by the use of process within a single state, even though not within a single District, ought to be determined in a single action. Rule 4 (f) would govern this matter if it were not for Rule 82 of the Federal Rules of Civil Procedure preserving statutory provisions in respect of venue.

The general rules of statutory construction applicable to this case have long been well settled. In *Henderson's Tobacco*, 11 Wallace 652, the Court said at p. 657:

"Where the powers or directions under several acts are such as may well subsist together, an implication of repeal cannot be allowed."

In *Posadas v. National City Bank of New York*, 296 U. S. 497, at pp. 503, 504:

"The cardinal rule is that repeals by implication are not favored. Where there are two acts upon the same subject, effect should be given to both if possible. There are two well-settled categories of repeals by implication: (1) Where provisions in the two acts are in irreconcilable conflict, the later act to the extent of the conflict constitutes an implied repeal of the earlier one; and (2) if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate similarly as a repeal of the earlier act. But, in either case, the intention of the legislature to repeal must be clear and manifest; otherwise, at least as a general thing, the later act is to be construed as a continuation of, and not a substitute for, the first act and will continue to speak, so far as the two acts are the same, from the time of the first enactment.

"* * * It was not meant by this statement to say, as a casual reading of it might suggest, that the mere

fact that the latter act covers the whole subject and embraces new provisions demonstrates an intention completely to substitute the latter act for the first. This is made apparent by the decision in *Henderson's Tobacco*, 11 Wall, 652, 657, 20 L. Ed. 235, * * *

As above shown in this brief it is impossible to hold here that the Act of March 3, 1897 (Section 48 of the Judicial Code) is a complete substitution of that act for the earlier act carried into Section 52 of the Judicial Code. As a result, no implied repeal of Section 52 by the enactment of Section 48 of the Judicial Code can be found.

In this brief our effort has been to present the relevant legislative history, cases and legal considerations and clear the way, in any degree we were able, to a correct decision. In doing so we desire not to have arrogated to ourselves any thought that we could add considerably to Judge Maris' able opinion in this case in the Circuit Court of Appeals for the Third Circuit. We submit that his opinion shows mastery of what is involved in this case and his conclusion and his bases for it find an immediately and intellectually congenial response in our sense of justice; in fewer words, his decision hits the mark.

Respectfully submitted,

ISAAC J. SEIN,

Attorney for Respondent-Appellee.

SUPREME COURT OF THE UNITED STATES.

No. 321.—OCTOBER TERM, 1941.

Stonite Products Company, Petitioner, vs. The Melvin Lloyd Company, and J. A. Zurn Mfg. Company.	}	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.
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[March 9, 1942.]

Mr. Justice MURPHY delivered the opinion of the Court.

The only question presented for our determination is whether Section 48 of the Judicial Code (28 U. S. C. § 109) is the sole provision governing the venue of patent infringement litigation or whether that section is supplemented by Section 52 of the Judicial Code (28 U. S. C. § 113). Section 48 gives jurisdiction of suits for patent infringement to the United States district courts in the district of which the defendant is an inhabitant or in any district in which the defendant shall have committed acts of infringement and have a regular and established place of business. Section 52 permits suits, not of a local nature, against two or more defendants residing in different judicial districts within the same state to be brought in either district.¹

¹ Section 48 provides:

"In suits brought for the infringement of letters patent the district courts of the United States shall have jurisdiction, in law or in equity, in the district of which the defendant is an inhabitant, or in any district in which the defendant, whether a person, partnership, or corporation, shall have committed acts of infringement and have a regular and established place of business. If such a suit is brought in a district of which the defendant is not an inhabitant, but in which such defendant has a regular and established place of business, service of process, summons, or subpoena upon the defendant may be made by service upon the agent or agents engaged in conducting such business in the district in which suit is brought."

Section 52 provides:

"When a State contains more than one district, every suit not of a local nature, in the district court thereof, against a single defendant, inhabitant of such State, must be brought in the district where he resides; but if there are two or more defendants, residing in different districts of the State, it may be brought in either district, and a duplicate writ may be issued against the defendants, directed to the marshal of any other district in which any defendant

Petitioner, Stonite Products Company, an inhabitant of the Eastern District of Pennsylvania without a regular and established place of business in the Western District of that State, was sued jointly with Lowe Supply Company, an inhabitant of the Western District, in the Western District for infringement of Patent No. 1,777,759 for a boiler stand. Petitioner was served with process in the Eastern District, entered a special appearance in the action in the Western District, and moved to dismiss or quash the return of service because venue was laid in the wrong district. The district court granted the motion and dismissed the cause as to petitioner.² 36 F. Supp. 29. The Circuit Court of Appeals reversed. 119 F. 2d 883. We granted certiorari because of an asserted conflict with *Motoshaver, Inc. v. Schick Dry Shaver, Inc.*, 100 F. 2d 236 (C. C. A. 9).

We hold that Section 48 is the exclusive provision controlling venue in patent infringement proceedings.

Section 48 is derived from the Act of March 3, 1897, c. 395, 29 Stat. 695, and its scope can best be determined from an examination of the reasons for its enactment.

Section 11 of the Judiciary Act of September 24, 1789, c. 20, 1 Stat. 79, permitted civil suits to be brought in the federal courts against a person only in the district of which he was an inhabitant or in which he was found at the time of serving the writ. That section applied to suits for patent infringement. *Chaffee v. Hayward*, 20 How. 208, 216; *Allen v. Blunt*, 1 Blatchf. 408, Fed. Cas. No. 215. The Act of March 3, 1875, c. 137, 18 Stat. 470, retained the provision allowing suit wherever the defendant could be found. The abuses engendered by this extensive venue prompted the Act of March 3, 1887, c. 373, 24 Stat. 552, which, as amended by the Act of August 13, 1888, c. 866, 25 Stat. 433, permitted civil suits to be instituted only in the district of which the defendant was an inhabitant, except that in diversity jurisdiction cases suit could be started in the district of the plaintiff's or the defendant's resi-

desides. The clerk issuing the duplicate writ shall indorse thereon that it is a true copy of a writ sued out of the court of the proper district; and such original and duplicate writs, when executed and returned into the office from which they issue, shall constitute and be proceeded on as one suit; and upon any judgment or decree rendered therein, execution may be issued, directed to the marshal of any district in the same State."

² Lowe Supply Company defaulted and the suit proceeded to judgment against it.

dence. The substance of those provisions was reenacted as Section 51 of the Judicial Code (28 U. S. C. § 112).

After the holding of *In re Hohorst*, 150 U. S. 653, that the Act of 1887 as amended did not apply to a suit against an alien or a foreign corporation "especially in a suit for the infringement of a patent right", the lower federal courts became uncertain as to the applicability of the Act of 1887 to patent infringement proceedings.³ In explanation of *Hohorst's* case it was said in *In re Keasbey & Mattison Co.*, 160 U. S. 221, 230, that "It was a suit for infringement of a patent right, exclusive jurisdiction of which had been granted to the Circuit Courts of the United States . . . ; and was therefore not affected by general provisions regulating the jurisdiction of the courts of the United States, concurrent with that of the several States". Thereafter the lower federal courts for the most part took the position that the Act of 1887 as amended did not apply to suits for patent infringement, and that infringers could be sued wherever they could be found.⁴

The Act of 1897 was adopted to define the exact jurisdiction of the federal courts in actions to enforce patent rights and thus eliminate the uncertainty produced by the conflicting decisions on the applicability of the Act of 1887 as amended to such litigation.⁵ That purpose indicates that Congress did not intend the

³ Prior to the *Hohorst* case the lower federal courts seem to have been unanimous in assuming that the Act of 1887 as amended governed patent infringement litigation. See *Reinstadler v. Reeves*, 33 F. 308; *Miller-Magee Co. v. Carpenter*, 34 F. 433; *Halstead v. Manning, Bowman & Co.*, 34 F. 565; *Gormully & Jeffrey Manuf'g Co. v. Pope Manuf'g Co.*, 34 F. 818; *Preston v. Fire-Extinguisher Manuf'g Co.*, 36 F. 721; *Adrianne, Platt & Co. v. McCormick Harvesting Mach. Co.*, 55 F. 287; *National Typewriter Co. v. Pope Manuf'g Co.*, 56 F. 849; *Bicycle Stepladder Co. v. Gordon*, 57 F. 529; *Cramer v. Singer Manuf'g Co.*, 59 F. 74.

After the *Hohorst* decision conflict developed. *Union Switch & Signal Co. v. Hall Signal Co.*, 65 F. 625, relying on *Galveston & Co. Railway v. Gonzales*, 151 U. S. 496, interpreted *In re Hohorst* as limited to infringement suits against aliens or foreign corporations. Accord, *Donnelly v. United States Cordage Co.*, 66 F. 613. Contra, *Smith v. Sargent Manuf'g Co.*, 62 F. 801.

⁴ *National Button Works v. Wade*, 72 F. 298; *Noonan v. Chester Park Athletic Club Co.*, 75 F. 334; *Earl v. Southern Pac. Co.*, 75 F. 609; *Westinghouse Air-Brake Co. v. Great Northern Ry. Co.*, 88 F. 258. Contra, *Gorham Manuf'g Co. v. Watson*, 74 F. 418.

⁵ See H. Rpt. No. 2905, 54th Cong., 2d Sess.

The remarks of Mr. Mitchell who reported the bill for the House Committee on Patents are significant (29 Cong. Rec. 1900-1901):

Mr. Speaker, the necessity for this law grows out of the acts of 1887 and 1888 which amended the judiciary act. Conflicting decisions have even arisen in the different districts in the same States as to the construction of these acts of 1887 and 1888, and there is great uncertainty throughout the country as to

Act of 1897 to dovetail with the general provisions relating to the venue of civil suits, but rather that it alone should control venue in patent infringement proceedings.

Section 52 is derived from R. S. § 740, which in turn stems from the Act of May 4, 1858, c. 27, 11 Stat. 272, a general act intended to do away with the insertion of special provisions preserving state-wide venue in acts dividing a state into two or more judicial districts,⁶ and the Act of February 24, 1863, c. 54, § 9, 12 Stat. 662. Respondents insist that Section 52 applies to patent infringement suits because it antedates Section 48, excludes from its purview only suits of a local nature, and is consistent with and complementary to Section 48 since it deals with the problem of venue in the geographical sense rather than in terms of specified classes of litigation. We cannot agree.

Even assuming that R. S. § 740 covered patent litigation prior to the Act of 1897, we do not think that its application survived the Act, which was intended to define the exact limits of venue in patent infringement suits.⁷ Furthermore, the Act of 1897 was a restrictive measure, limiting a prior, broader venue. *General*

whether or not the act of 1887 as amended by the act of 1888 applied to patent cases at all.

"The bill is intended to remove this uncertainty and to define the exact jurisdiction of the circuit courts in these matters.

"The committee have been extremely careful in the investigation of the matter before reporting the bill.

"As the bill was referred to me, I wrote to a great many patent lawyers in different parts of the country, in order to get their views and objections, if any, and I find that they are all unanimously in favor of the bill as it is now reported, and state that it would tend not only to define the jurisdiction of the circuit courts not now defined, but also limit that jurisdiction and so clearly define it that in the future there will be no question with regard to the application of the acts of 1887 and 1888.

"The trouble has arisen in this matter that under the act of 1888 some of the courts were uncertain whether or not the law did or did not apply to patent cases, and therefore this special bill relating to patents solely has been brought up because of the indefiniteness and uncertainty arising from different constructions of the act of 1888 as applied to patent cases."

⁶ See the remarks of Senator Pugh who reported the bill for the Senate Judiciary Committee. 36 Cong. Globe 936, 35th Cong., 1st Sess.

⁷ As a matter of fact there was some uncertainty as to whether R. S. § 740 survived the general venue provisions of the Acts of 1875 and 1887. See *Greeley v. Lowe*, 155 U. S. 58, 72; *Petri v. Creelman Lumber Co.*, 199 U. S. 487, 497; *Camp v. Gress*, 250 U. S. 308, 315. It was held that it did in *East Tennessee, V. & G. R. Co. v. Atlanta & F. R. Co.*, 49 F. 608; *Goddard v. Mailler*, 80 F. 422; and *Doscher v. United States Pipe Line Co.*, 185 F. 959. But compare *New Jersey Steel & Iron Co. v. Chormann*, 105 F. 532, and *Seybert v. Shamokin & Mt. C. Electric Ry. Co.*, 110 F. 810.

Elec. Co. v. Marvel Co., 287 U. S. 430, 434-435; *Bowers v. Atlantic, G. & P. Co.*, 104 F. 887; *Cheatham Electric Switching D. Co. v. Transit D. Co.*, 191 F. 727.⁸ Thus there is little reason to assume that Congress intended to authorize suits in districts other than those mentioned in that Act.

The reenactment of the Act of 1897 as Section 48, and of R. S. § 740 as Section 52 of the Judicial Code by the Act of March 3, 1911, c. 231, 36 Stat. 1100-1101, is not indicative of any Congressional understanding that the two sections are complementary. Quite the contrary, for Section 52 appears in the Judicial Code as an exception to Section 51, the general venue provision derived from the Act of 1887, as amended. See *Camp v. Gress*, 259 U. S. 308, 315. Section 51 is, of course, not applicable to patent infringement proceedings. *General Elec. Co. v. Marvel Co.*, *supra*.⁹ Since Section 48 is wholly independent of Section 51, there is an element of incongruity in attempting to supplement Section 48 by resort to Section 52, an exception to the provisions of Section 51. Cf. *Connecticut Fire Ins. Co. v. Lake Transfer Corp.*, 74 F. 2d 258.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

⁸ *Zell v. Erie Bronze Co.*, 273 F. 833, is to the contrary but apparently overlooks the trend of the lower federal courts after *In re Keasbey & Mattinson*, 160 U. S. 221, was decided. See note 4, ante.

⁹ This is apparent from the legislative history of the Act of 1897 from which Section 48 is derived. See note 5, ante.

Section 51 is likewise inapplicable to suits for copyright infringement. *Lumiere v. Wilder, Inc.*, 261 U. S. 174.